

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

GUADALUPE ESTRADA, PRO SE,	§	
also known as GUADALUPE J. ESTRADA,	§	
TDCJ-CID No. 1665869,	§	
IDOC No. 57703,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:12-CV-0059
	§	
SUZZANNE TENORIO-PAUL, NP;	§	
DAVID R. BASSE, MD;	§	
BILLY L. TOMLINSON, LVN; and	§	
CHARLES McDUFFIE, Warden,	§	
	§	
Defendants.	§	

**ORDER GRANTING DEFENDANT McDUFFIE'S
MOTION TO DISMISS AND ORDER OF PARTIAL DISMISSAL**

Plaintiff GUADALUPE ESTRADA, acting pro se and while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants and has been granted permission to proceed in forma pauperis.

On October 18, 2012, a Report and Recommendation was issued by the United States Magistrate Judge recommending that the Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(1) filed by defendant CHARLES McDUFFIE be granted; and that plaintiff's claims against defendant McDUFFIE be dismissed without prejudice pursuant to Rule 12(b)(1) for lack of jurisdiction, without prejudice pursuant to Rule 12(b)(6) for failure to state a claim on which relief can be granted, and for failure to overcome defendant's entitlement to qualified immunity.

Plaintiff filed objections to the Report and Recommendation on October 29, 2012.

As an aside and to prevent any misunderstanding, the Court notes that the Magistrate Judge analyzed plaintiff's claims against defendant McDUFFIE in both McDUFFIE's individual and official capacities. Further, while the docket shows plaintiff filed an April 19, 2012 pleading entitled, "Order to Show Cause for an [sic] Preliminary Injunction," that document did not operate to amend plaintiff's complaint. The complaint contains a request for injunctive relief against defendants BASSE, TOMLINSON, and TENORIO, not against defendant McDUFFIE.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the Objections filed by the plaintiff.

The Court is of the opinion that the plaintiff's Objections should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that defendant McDUFFIE's Motion to Dismiss is GRANTED; and plaintiff GUADALUPE ESTRADA's claims against defendant McDUFFIE are DISMISSED WITHOUT PREJUDICE PURSUANT TO RULE 12(B)(1) FOR LACK OF JURISDICTION, WITHOUT PREJUDICE PURSUANT TO RULE 12(b)(6) FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED; AND FOR FAILURE TO

OVERCOME DEFENDANT'S ENTITLEMENT TO QUALIFIED IMMUNITY.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Clerk shall send a copy of this Order to plaintiff and to any attorney of record.

It is SO ORDERED.

Signed this the 30th day of October, 2012.


MARY LOU ROBINSON
United States District Judge